No. 89-174

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

LEONARD M. ROSS,
Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Respondent,

LYNN B. STITES AND STITES
PROFESSIONAL LAW CORPORATION,
Real Parties in Interest.

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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SUPPLEMENTAL APPENDIX

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

2d Civ. B028369

(Super. Ct. No. C511991 consolidated with
Super. Ct. No. C542450)

LYNN B. STITES; STITES PROFESSIONAL LAW CORPORATION,
Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Respondent.

LEONARD M. ROSS,
Real Party in Interest.

[Filed January 13, 1988]

Application for Writ of Mandate from the Superior Court of Los Angeles County. J. Lewin, Judge. Writ Denied.

Contos & Bunch, Bruce M. Bunch, attorneys for Petitioners.

Kinsella, Boesch, Fujikawa & Towle; Chase, Rotchford, Drukker & Bogust; and Wyman, Bautzer, Christensen, Kuchel & Silbert, attorneys for Real Party in Interest.

INTRODUCTION

Petitioners Lynn B. Stites and Stites Professional Law Corporation (Stites) seek a writ of mandate to compel respondent superior court to reinstate their cause of action against real party in interest Leonard M. Ross (Ross) for tortious interference with a prospective economic advantage. The superior court dismissed the action when Stites failed to amend the complaint [1] following the sustaining of Ross' demurrer. We affirm and deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND [2]

The complaint alleges that Ross retained Stites to represent him in various actions, primarily bad faith litigation against numerous insurance companies. Pursuant to a retainer agreement, Stites was to receive as his fee 40% of any recovery from the insurance carriers.

Ross discharged Stites as his attorney of record in the summer of 1984 and subsequently settled his claims with some or all of the insurance companies. "STITES gave written and oral notice to each of the Insurers of his claim for a lien" against these settlements to recover his fees. However, as alleged in the complaint, Stites received none of the proceeds as a result of the deliberate

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[1] Stites' action actually was filed as a cross-complaint in a case that originated as a complaint in interpleader by an insurance company. This procedural detail is not relevant to the resolution of the issue raised in his writ petition. Therefore, for the sake of simplicity and clarity, the matter will be referred to as a complaint by Stites and, when appropriate, the parties will be referred to as plaintiff and defendant.

[2] The factual allegations set forth in the writ petition are at substantial variance with those in the complaint with respect to the nature and extent of Ross' tortious conduct. We draw our summary from the facts contained in the complaint, since it was on that basis that the superior court ruled.

failure by the insurers and Ross to direct any payment to him.

Apparently referring to his notice of lien, Stites further alleges that he "had an economic relationship with ROSS," which Ross interfered with by agreeing to indemnify the insurance companies if they disregarded Stites' claims under the lien. The complaint concludes with the allegation that "[t]he failure of each of the Insurers and ROSS to make the payment to STITES as required have actually disrupted the economic relationship between ROSS and STITES such that ROSS now has the use and benefit of all of the monies and STITES has not been paid any of it."

The complaint does not specify the nature or extent of Stites' representation of Ross or any allegation that Stites made a claim for the reasonable value of those services in attempting to enforce his lien.

The trial court sustained Ross' demurrer for failure to state a cause of action and granted Stites 30 days to amend. When he failed to do so, the court dismissed the complaint; and Stites now seeks extraordinary relief from that ruling.

ISSUE PRESENTED

The narrow issue we are presented is whether an attorney retained under a contingency fee arrangement can state a cause of action for intentional interference with a prospective economic advantage against his former client who discharges the attorney prior to any recovery and later agrees to indemnify a third party that settles the litigation in disregard of the attorney's lien for fees.

DISCUSSION

The trial court sustained Ross' demurrer to the first amended complaint with leave to amend. Since Stites declined to avail himself of the opportunity to rectify

his pleading, we must presume "that he has stated as strong a case as he can; and in determining whether or not the trial court abused its discretion, we must resolve all ambiguities and uncertainties raised by the demurrer against plaintiff. [Citations.]" (*Hooper* v. *Deukmejian* (1981) 122 Cal.App.3d 987, 994.)

"As set out in *Buckaloo* v. *Johnson* (1975) 14 Cal.3d 815, 327[], the elements of the tort of interference with prospective business advantage are: 1) an economic relationship between the plaintiff and some third person containing the probability of future economic benefit to the plaintiff; 2) knowledge by the defendant of the existence of the relationship; 3) intentional acts on the part of defendant designed to disrupt the relationship; 4) actual disruption of the relationship; and 5) damages proximately caused by the acts of defendant." (*Asia Investment Co.* v. *Borowski* (1982) 133 Cal.App.3d 832, 840-841.)

Consequently, for Stites to state a cause of action, he must allege a viable economic relationship between him and a third party, in this case the insurance companies, with which Ross has interfered. (See, e.g., *A.F. Arnold & Co.* v. *Pacific Professional Ins., Inc.* (1972) 27 Cal.App. 3d 710, 714-715.) Here, however, the only relationship Stites identifies is the one between him and Ross arising from their former association as attorney and client: "STITES had an economic relationship with ROSS whereby STITES was to receive a fee for prosecuting certain bad faith ligitation against the . . . Insurers." "In complete and conscious disregard of the economic relationship enjoyed by STITES with respect to his representation of ROSS . . . ." "The failure of each of the Insurers and ROSS to make the payments to STITES as required has actually disrupted the economic relationship between ROSS and STITES . . . ."

Thus, Ross is named both as the defendant and as the party with whom Stites had the only relevant economic

connection. More explicitly, Stites fails to allege facts establishing an economic relationship with a *third party* with which Ross has interfered. The only relationship alleged is that between plaintiff Stites and defendant Ross himself; and we perceive no judicial or logical basis for finding that a party may be subjected to liability for intervening in his own relationship with another.

First, case authority consistently defines this tort as an unlawful disruption of the plaintiff's relationship with a third party. (See, e.g., *Buckaloo* v. *Johnson* (1975) 14 Cal.3d 815, 827; *Herron* v. *State Farm Mutual Ins. Co.* (1961) 56 Cal.2d 202, 205; *Sade Shoe Co.* v. *Oschin & Snyder* (1984) 162 Cal.App.3d 1174, 1179; *Asia Investment Co.* v. *Borowski*, *supra*, 133 Cal.App.3d at 840-841; *Dryden* v. *Tri-Valley Growers* (1977) 65 Cal.App.3d 990, 994; *Wise* v. *Southern Pacific Co.* (1963) 223 Cal. App.2d 50, 65.) In addition, the definition of interference itself permits no other logical interpretation. "To interfere" means "to interpose in a way that hinders or impedes . . . ." (Webster's Ninth New Collegiate Dictionary, p. 631.) "To interpose" means "to put (oneself) between . . . ." (*Id.*, at p. 632.) On this basis alone, the logical and practical conclusion that one cannot intervene between oneself and another is manifest. Hence, by pleading that Ross' tortious conduct consisted only of his interference with his own economic relationship with Stites, Stites fails to allege facts establishing a key element of this cause of action.

Moreover, whatever rights Stites may have pursuant to his lien do not give rise to an economic relationship with the insurance companies sufficient to state actionable interference by Ross in agreeing to indemnify them if they decline to pay part of the settlement proceeds to Stites. A lien for attorney fees is derivitive of and dependent upon the original attorney-client relationship. (See *Cetenko* v. *United California Bank* (1982) 30 Cal.3d 528, 531; *Hansen* v. *Haywood* (1986) 186 Cal.App.3d 350, 355-

356; *Bandy* v. *Mt. Diablo Unified Sch. Dist.* (1976) 56 Cal.App.3d 230, 234-235; see also Civil Code sections 2872, 2874, 2875.) Thus, as the Court of Appeal explained in *Siciliano* v. *Fireman's Fund Ins. Co.* (1976) 62 Cal.App.3d 745, 752-753, it is the insurance company that interferes with the plaintiff attorney's prospective economic advantage when it disregards his or her lien for fees since the insurance company is a third party unlawfully disrupting the economic relationship between the attorney and client from which the lien generates. (See also *id.*, at p. 759.)

Thus, we find not only that Stites did not allege Ross' interference with a prospective economic advantage running from the insurance company but that he could not state such a cause of action against Ross under the facts of this case. In light of the foregoing conclusions, we find no abuse of discretion or legal error in respondent court's dismissal of Stites' complaint. That ruling is consistent with case authority in light of the pleadings.

DISPOSITION

The petition for writ of mandate is denied, and the alternative writ is discharged.

NOT TO BE PUBLISHED

/s/ Arabian, J.
ARABIAN, J.

We concur:

/s/ Klein, P.J.
KLEIN, P.J.

/s/ Danielson, J.
DANIELSON, J.